THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte URBAN WIDLUND, GUNILLA HEDLUND,
and ROBERT KLING

Appeal No. 1998-2393
Application No. 08/295,874

REHEARING

Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to appellants' "REQUEST FOR REHEARING UNDER 37 CFR § 1.197(b)" filed September 28, 2000 (hereafter "request") of our decision dated July 28, 2000 wherein we made the following determinations:

reversed the rejection of claims 14 through 41 under 35 U.S.C. § 112, second paragraph, as being indefinite;

reversed the rejection of claims 14 through 17, 20, 21, 23 through 31, 35, and 38 through 41 under 35 U.S.C. § 102(b) as being anticipated by Stevens;

affirmed the rejection of claims 14 through 18, 20, 21, and 26 under 35 U.S.C. § 102(a) as being anticipated by Honshu Paper (the Japanese reference);

affirmed the rejection of claims 23, 24, 28 through 33, 35, 36, 38, 40, and 41 under 35 U.S.C. § 102(a) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Honshu Paper (the Japanese reference); and

affirmed the rejection of claims 19, 22, 34, and 37 under 35 U.S.C. § 103 as being unpatentable over Honshu Paper (the Japanese reference) in view of Villez.

In the request (page 1), appellants assert that this panel of the Board relied upon an inaccurate English translation[1] of the primary reference to Honshu paper in affirming the rejections noted above. More particularly, it is the view of appellants that the office translation prepared by FLS, Inc. contains several significant errors. As perceived by appellants, the reference in the office translation to another separate "elastic" sheet is incorrect. To support this conclusion appellants rely upon a duplicate copy of a previously filed (February 28, 1997) "Adati Patent Office" (Adati) translation, now accompanied by a translator's certificate certifying as to its accuracy, which is indicated

[1] As pointed out in footnote number 2 of our earlier decision the translation referred to by appellants was prepared in the United States Patent and Trademark Office.

to make no mention of “elastic” in connection with the separate sheet of different material. To confirm the Adati translation, appellants also provide an additional partial English translation referred to as Asamura Patent Office (Asamura), which Asamura translation is indicated to show that there is no mention of the word “elastic” in connection with the separate sheet. Based upon the inaccurate translation relied upon by the Board, appellants conclude (request, page 7) that the earlier decision should be modified to reverse the respective
final rejections of claims 14 through 24, 26, 28 through 38, 40, and 41.

Having fully considered the office translation of the Japanese reference that we relied upon in sustaining the examiner’s rejections based thereon, the argument advanced in the request, and the respective Adati and Asamura translations, we find ourselves in accord with the appellants’ point of view that the office translation erred in referencing the another separate sheet as being elastic.

Without the separate sheet being elastic in the Japanese reference, appellants argue (request, page 6) that the Board's conclusion at the end of page 13 of the decision is no longer fairly based since the stretchable elastic material 5 and stretchable elastic material 13 together cannot be fairly said to define an elastically stretchable region that covers essentially the whole of at least one of the front and back parts of the diaper as set forth independent claim 14. As percieved by appellants, the Japanese reference shows only two narrow strips of elastic 5,5, and 13 whereas with the present invention a continuous region incorporates numerous elastic elements 26.

In light of appellants' commentary and our present understanding of the Japanese reference, we share the view that the applied Japanese document does not address at least one elastically stretchable region covering essentially the whole of at least one of the front and back parts of the pants-type diaper of claim 14. Necessarily, it follows that we also alter our earlier stated view (decision, page 13, lines 1 through 7) by now indicating that the claimed "whole"

of at least one front part and back part refers to the area of the front or back part.

Since the evidence of obviousness would not have been suggestive of at least one elastically stretchable region covering essentially the whole of at least one of the front and back parts of a pants-type diaper (claim 14), we modify our earlier decision by not sustaining each of the examiner's rejections under 35 U.S.C. § 102(a) and 35 U.S.C. § 103 which we had earlier affirmed.

REMAND TO THE EXAMINER

We remand this application to the examiner to assess the overall teaching of the Japanese reference with other known prior art to ascertain whether it would have been obvious to provide the waist band W and adjacent portions of surface sheet 1 having stretchable elastic material 5, 13, in the

panty style disposable diaper of the Japanese reference (Figs. 12 and 13), with additional stretchable elastic material to effect at least one
elastically stretchable region covering essentially the whole of at least one of respective front and back parts, as now claimed.

In summary, appellants' request for rehearing has been granted and our earlier decision modified such that we do not sustain each of the examiner's rejections under 35 U.S.C. § 102(a) and 35 U.S.C. § 103 based upon the Japanese reference. Accordingly, the decision of the examiner is REVERSED (not AFFIRMED-IN-PART as originally set forth), since each of the rejections on appeal has not been sustained. Additionally, we have remanded the application to the examiner to consider the matter discussed above.

GRANTED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
NEAL E. ABRAMS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	)	

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